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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re A.B., a Person Coming Under the Juvenile Court
Law.

C087243

THE PEOPLE,

(Super. Ct. No. JV137313)

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

A.B. (the minor) appeals from a juvenile court order granting probation. He contends that the condition he refrain from associating with gang members or engaging in specified conduct associated with gang members was not reasonably related to his current offense, his criminal history, or his social and life history. Finding no merit in the contention, we will affirm the juvenile court order.

BACKGROUND

According to the probation report, Fresno police were dispatched to a Rite Aid pharmacy in response to a robbery call.¹ The pharmacists told the police that three men

¹ The attempted second-degree robbery count pertained to a crime allegedly committed on the same date at a CVS pharmacy.

had jumped the counter and demanded prescription drugs. One suspect punched one of the pharmacists in the jaw even though he was complying. Another suspect punched the other pharmacist in the back of the head, causing her to fall and injure her wrist.

A witness spotted the suspects carrying sacks to a waiting vehicle. Officers tried to make a traffic stop of the vehicle, but the driver eluded them until he drove into a dead-end street. Four occupants of the vehicle jumped out and ran. The driver was apprehended and identified as the minor. The other three, after being detained, were identified as young adults R.A., D.R., and P.V. A victim identified the minor as one of those who had jumped the counter.

R.A. was later found to be a validated member of the G Mobb Killa How Camp gang. P.V. was later found to be a validated member of the Del Paso Heights Bloods gang.

The Fresno County District Attorney filed a juvenile wardship petition in Fresno County Superior Court (Welf. & Inst. Code, § 602)² alleging that the 15-year-old minor committed three felonies on or about March 9, 2018: evading an officer (Veh. Code, § 2800.2, subd. (a) -- count 1), second degree robbery (Pen. Code, § 211 -- count 2), and attempted second degree robbery (Pen. Code, §§ 664/211 -- count 3).

Following a contested jurisdictional hearing which was apparently not transcribed, the juvenile court found true the charge of second degree robbery and dismissed the other counts. The case was transferred to Sacramento County, the minor's county of legal residence, for disposition.

The probation report contained the following additional relevant information:

² Undesignated statutory references are to the Welfare and Institutions Code.

The minor resided with his mother, who had full legal and physical custody of him, in Sacramento. The minor's father was absent and had no relationship with the minor.

The mother believed she had adequate control of the minor's behavior. The minor was respectful to family members and followed the rules of the home. He abided by his curfew and did not run away. He did not use alcohol or drugs. He was not involved with gangs. His friends were not an issue for the family at present. The mother believed the minor was “ ‘thrown under the bus’ ” in the present crime because he did not know the robbery was going to happen. The minor had been diagnosed with Attention Deficit Disorder about 8 years before and currently took Adderall; he did not have any other mental health issues.

The minor was supposed to be in ninth grade but was not enrolled in school. According to the Fresno County probation officer's detention memo, the mother mistakenly believed the minor was currently enrolled. And contrary to the mother's claim that the minor never ran away, she reported the minor left the home on March 9, 2018 (the date of the alleged crimes) and traveled to Fresno with unknown companions without her knowledge or permission. At the last school he attended, he got D's and F's. He received special education services and had an Individual Education Plan for a learning disability. The minor had been assessed as having a low likelihood of reoffending.

The probation report recommended special conditions of probation that included a ban on associating with the minor's confederates in the robbery. The report did not recommend a ban on associating with gang members in general.

At disposition, the prosecutor recommended that the juvenile court impose gang conditions. The minor's counsel objected that there was no “nexus” between such conditions and the present offense. The court observed that the social study report identified one of the minor's confederates as a Del Paso Heights Blood. The minor's

counsel asserted that the present offense was not charged as a gang offense or gang-related offense and there was no evidence the minor knew he was associating with gang members.

Addressing the minor, the juvenile court stated: “I am going to add a gang condition. I want you to stay away from the kids that are going to get you into trouble as part of your probation conditions.”

The juvenile court adjudged the minor a ward of the court and followed the probation officer’s recommended disposition: probation under the mother’s care and custody, including 60 days on electronic monitoring (with credit for time served) and 10 days on juvenile work project. The court added the following special condition to those recommended by probation: “[The minor s]hall not associate with persons who the minor knows, reasonably should know, or who the Probation Officer advises you is involved in gang activities, nor possess, display or wear clothing, display items or emblems reasonably known or identified by the Probation Officer to be associated with or symbolic of gang membership, nor wear hairstyles or cut facial hair (including eyebrows) in a manner the minor knows or reasonably should know to be associated with or symbolic of gang membership and shall not knowingly enter any gang/drug area and/or territory specifically so designated for him/her by the Probation Officer, and shall verbally advise the Probation Officer of any nickname or ‘ “street moniker” ’ he/she currently uses.”

DISCUSSION

The minor contends the gang conditions should be stricken because “[n]othing about appellant’s current offense, criminal history, or his social and life history involved gang activity.” We disagree.

Juvenile courts have broad discretion in devising probation conditions, and we review those conditions for abuse of discretion. (§§ 727, subd. (a)(1), 730, subd. (b); *In re P.A.* (2012) 211 Cal.App.4th 23, 33; *In re Luis F.* (2009) 177 Cal.App.4th 176, 188.)

Because juvenile probation conditions are intended to reform and rehabilitate, “ ‘a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) However, such conditions must be carefully tailored and must be reasonably related to the end of rehabilitation. (*Id.* at p. 890.)

Like adult probation conditions, juvenile probation conditions are reviewed under the *Lent* test (*People v. Lent* (1975) 15 Cal.3d 481, 486, superseded on another ground by Proposition 8 as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290-295): A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. (*In re D.G.* (2010) 187 Cal.App.4th 47, 52.) A condition of probation which forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. (*Id.* at p. 53.)

The minor asserts the gang conditions in his order of probation fail the *Lent* test because there is no gang involvement shown in his social history, the present offense was not gang-related, he is not a gang member, and the probation report did not recommend any gang-related conditions. But the sparse appellate record does not provide much information about the minor’s social history or his involvement in the present offense. It does not show how long he knew his confederates, how he met them, or whether he knew beforehand that some were gang members. To the extent it portrays the minor as a law-abiding person unconnected to gangs, it depends largely on the account of the minor’s mother, who was unaware of key aspects of his life (such as the fact that he was no longer attending school).

The record does show, however, that the minor chose to associate with adults, including gang members, to commit a violent crime of the kind typically committed by

gangs. The minor has shown an inclination to engage in conduct which puts him at risk of renewed association with gang members and involvement in their criminal activities. The fact that the probation conditions included a specific ban on associating with his confederates was not enough to ensure that he would refrain from similar activities with others. Under the circumstances, the gang condition was reasonably related both to the minor's present offense and to future criminality. (*People v. Lent, supra*, 15 Cal.3d at p. 486; *In re D.G., supra*, 187 Cal.App.4th at pp. 52-53.)

The minor relies on *In re Edward B.* (2017) 10 Cal.App.5th 1228, but that case is inapposite because the minor in that case did not commit a violent crime in concert with others and had never been associated with gang members. (*Id.* at pp. 1231, 1234-1236.) The district attorney considered a gang condition unnecessary in that case, and the Attorney General agreed with the appellant that it was invalid. (*Id.* at pp. 1234-1235.) This case is different.

The minor has failed to show that imposing the gang conditions was an abuse of discretion.

DISPOSITION

The order of probation is affirmed.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
DUARTE, J.